State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

MEMORANDUM

Rev: App. Proc No. 37

To: Water Allocation Bureau and Regional Managers

From: L. Glen Saxton

RE: TERMINOLOGY OF ADVERSE ACTION ON VARIOUS WATER RIGHT FILINGS

Date: March 16, 1989

Department staff are frequently involved in actions to remove water right filings from our records for various reasons. It is important that any order to show cause or pending order to take some action reference the code section being used and be written using the specific terms provided in the code section authorizing the action.

The following is an outline of various actions which are commonly taken in connection with such filings.

42-203A(5) Department can:

A) PARTIALLY APPROVE an application,

B) DENY an application (Re: 42-204 I.C.)

C) REJECT an application if:

1) Use will reduce the quantity of water under existing rights,

2) Water supply itself is insufficient for the purpose intended,

3) Application is not made in good faith, but is made for delay or speculative purposes,

4) Applicant does not have sufficient financial resources to complete the project, or

5) Application will conflict with the local public interest.

Aggrieved party can:

A) If a hearing was not held, request a hearing before the director within 15 days after receipt of the denial or conditioned approval. re: 42-1701A(3), I.C.

B) If a hearing was held and proposed decision issued, file exceptions and briefs and/or request oral argument on the matter within 15 days of mailing of the proposed decision. Re: 42-1701A(3) and 67-5211, I.C. and Practice and Procedure Rule 10,2,1.

C) File with the district court within 30 days after service of final decision. Re: 42-1701A(4), 67-5215 and 67-5216, I.C.

42-203D Department can:

A) CANCEL a permit

B) CONTINUE a permit

Aggrieved party can request a hearing. Re: 42-1701A, 67-5209 thru 67-5215, I.C.

42-204 Department can:

A) VOID application if:

1) Application is returned and corrected application is not resubmitted, or

2) Additional information is requested and is not provided within 30 days.

B) DENY application for reasons described in 42-203C, I.C.

Aggrieved party can:

A) Request hearing before the director within 15 days after receipt of the denial or conditional approval. Re: 42-1701A(3), I.C.

B) File with district court within 30 days after service of director's final decision (Re: 42-1701A(4), 67-5215 and 67-5216, I.C.

42-208 Department can CANCEL and REVOKE a permit for power purposes for non-compliance with the act.

Aggrieved party can:

A) Request a hearing before the director within 15 days after receipt of cancellation notice. Re: 42-1701A(3), or

B) File with the district court within 30 days after service of decision. Re: 42-1701A(4), 67-5215 and 67-5216, I.C.

42-211 Department can:

A) DENY the application for amendment,

B) REJECT application for amendment, or

C) PARTIALLY APPROVE the application for amendment.

Aggrieved party can:

A) If no hearing - request hearing before the department within 15 days after receipt of denial or conditional approval. Re: 42-1701A(3), I.C.

B) If hearing was held - file with the district court within 30 days after service of decision. Re: 42-1701A(4), I.C.

42-219 Department can:

VOID a permit if the exam shows permit holder has not fully complied with the law and conditions of the permit.

Aggrieved party can:

A) Request hearing within 15 days. Re: 42-1701A(3), I.C.

B) File with the district court within 30 days. Re: 42-1701A(4), 67-5215 and 67-5216, I.C.

42-222 Department can:

DENY an application for transfer.

Aggrieved party can:

A) Request hearing within 15 days. Re: 42-1701A(3), I.C.

B) File with the district court within 30 days. Re: 42-1701A(4), 67-5215 and 67-5216, I.C.

42-311 Department can:

CANCEL a permit if:

A) permit holder has refused or failed to comply with the conditions of the permit or with the provisions of the law governing the permit.

Aggrieved party can:

A) Request administrative hearing within 21 days of the service of the order.

B) File with the district court within 30 days. Re: 67-1701A(4), 67-5215 and 67-5216, I.C.

42-350 Department can:

REVOKE a license if:

1. Licensee has ceased to apply the water to a beneficial use for a period of 5 continuous years,

2. Licensee has wilfully or intentionally failed to comply with any conditions in the license,

3. Licensee has wilfully or intentionally failed to comply with provisions of the law governing the license.

Aggrieved party can:

1. Request an administrative hearing within 21 days of the date of service of the order,

2. File with the district court within 30 days. Re: 42-1701A, I.C.

3. Waive the right to an administrative hearing and file a complaint with the district court within 42 days of the service of the order to show cause.

Practice and Procedure Rule 9.2

Department can DENY or DISMISS a petition, application or complaint for failure to appear at a hearing.

Aggrieved party can file a petition with the district court within 30 days after service of the final decision of the department. Re: 67-5215, I.C.

Water Appropriation Rule 4,2,2,4.

Department can VOID an application for permit for failure to pay the readvertising fee.

Aggrieved party can request a hearing pursuant to 42-1701A(3), I.C.

Water Appropriation Rule 4,2,3,4.

Department can CANCEL a permit for failure to pay the readvertising fee.

Aggrieved party can request a hearing pursuant to 42-1701A(3), I.C.